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6 Attorneys for Creditor,
LEANETHA DARBY
7

8 **UNITED STATE BANKRUPTCY COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**
10

11 In Re:) Case No. 12-12020 (MG)
12)
13)
14) Chapter 11
RESIDENTIAL CAPITAL, LLC, et al.,)
15)
Debtor.)
16)
17) Jointly Administered
18)
19)
20)
21)

22 **NOTICE AND MOTION FOR RELIEF FROM STAY**

23 **PLEASE TAKE NOTICE** that the Court will hold a hearing on creditor/movant Leanetha
24 Darby's below Motion for Relief from Stay on **December 17, 2013 at 10:00 AM** before the
25 Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New
26 York, Alexander Hamilton Courthouse, One Bowling Green, New York, New York 10004-1408,
27 Room 501, any opposition is due per the Bankruptcy Code and applicable Local Rules.
28

1 COMES NOW the Movant, Leanetha Darby (“Movant”) by and through her counsel of
2 record, and moves to terminate the automatic stay in order to proceed with her pre-petition claims,
3 filed in the Superior Court of the State of California, Van Nuys against GMAC Mortgage, LLC
4 (“GMAC”). In support of said motion, Movant states as follows:
5

- 6 1. On or about March 20, 2013, the Movant filed a civil lawsuit in the Superior Court of the State
7 of California, Van Nuys entitled Leanetha Darby v. GMAC MORTGAGE, LLC F/K/A GMAC
8 MORTGAGE CORPORATION; EXECUTIVE TRUSTEE SERVICES, INC.; and DOES 1
9 through 50, inclusive (Case No. LC100069) (“Lawsuit”). A copy of the Complaint and Summons
10 are attached as Exhibit A.
- 11 2. The Movant brought claims against GMAC for illegally and unlawfully proceeding with non-
12 judicial foreclosure sale against her real property located at 7700 Oso Ave., Winnetka, CA 91306
13 (“Subject Property”) on or about August 31, 2011. In addition to money damages, Movant is
14 seeking to have the Court set aside the foreclosure sale.
- 15 3. On or about April 25, 2013, GMAC filed a Notice of Bankruptcy and Suggestion of Automatic
16 Stay in the Lawsuit. This filing has prevented the Lawsuit from proceeding in the California
17 Superior Court.
- 18 4. The pendency of the Movant’s lawsuit supports lifting the stay to the extent that the Movant has
19 properly asserted claims against GMAC.
- 20 5. On July 13, 2012, this Court entered a final supplemental order granting limited stay relief for
21 borrowers or their tenants to prosecute direct claims and counter-claims in foreclosure and
22 eviction proceedings, including in states in which non-judicial foreclosure is allowed.
- 23 6. Specifically, the supplemental order states, “a borrower shall be entitled to assert and prosecute
24 direct claims relating exclusively to the property that is the subject of the loan owned or serviced
25 by Defendant for purposes of defending, unwinding, or otherwise enjoining or precluding any
26 foreclosure, or with respect to completed foreclosure sales in non-judicial states where any
27 applicable challenge period has not yet expired.”
28

- 1 7. California, where Subject Property is located, is a non-judicial state, and the applicable challenge
2 period of, 4 years for a tort committed against a property right. Movant is well within this the
3 statute of limitations.
- 4 8. Movant's complaints focuses on events in early 2011 when Movant began apply for a loan
5 modification with GMAC. GMAC was working with Movant to qualify Movant for a
6 modification and initiated foreclosure proceedings simultaneously.
- 7 9. In fact, on June 3, 2011, while in the midst of working with Movant, GMAC caused a Notice of
8 Trustee Sale to be recorded.
- 9 10. The real crux of Movant's complaint lies in Movant tendering a cashier's check to GMAC for
10 the full amount noticed to be due (\$24,547.59) in order to bring the loan current. Movant made
11 sure to tender this amount and subsequently lost her home in a trustee sale on August 13, 2011.
- 12 11. Movant, obviously confused themselves, sent Movant a letter after her home had sold letting her
13 know the foreclosure sale was cancelled as the loan was now paid in full.
- 14 12. Movant's allegations of wrongdoing by GMAC fall directly within this Court's order granting
15 limited stay relief for borrowers to prosecute direct claims in foreclosure proceedings.
- 16 13. The Movant will suffer harm if she is not permitted to proceed with her claims in the Lawsuit.
- 17 14. The amount in controversy in the action is insignificant and inconsequential to the debtor or the
18 debtor's estate. The resolution of Movant's lawsuit is de minimis compared to the size of the
19 debtor's estate and the resolution of the Lawsuit should have no impact upon the debtor's
20 reorganization.

21
22 WHEREFORE, the Movant, Leanetha Darby, respectfully requests that this Court lift the
23 stay to permit all matters be heard in the above-referenced Lawsuit, now pending in the Superior
24 Court, State of California, Van Nuys.
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1 DATED: November 13, 2013

CONSUMER ACTION LAW GROUP, PC

4 By: /s/ Lauren Rode _____

5 Lauren Rode

6 Attorney for Movant, Admitted Pro Hac
7 Vice

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon counsel of record for all other parties to this action on this 15th day of November 2013.

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